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BEFORE THE ARIZONA CORPORATION COMMISSION

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2007 APR -2 P 2:18

AZ CORP COMMISSION
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IN THE MATTER OF INVESTIGATION
INTO U S WEST COMMUNICATIONS,
INC.'S COMPLIANCE WITH CERTAIN
WHOLESALE PRICING REQUIREMENTS
FOR UNBUNDLED NETWORK ELEMENTS
AND RESALE DISCOUNTS.

Docket No. T-00000A-00-0194

Arizona Corporation Commission
DOCKETED

APR -2 2007

**COX ARIZONA TELCOM'S REPLY
IN FURTHER SUPPORT OF
MOTION TO COMMENCE PHASE III OF THE
QWEST UNE PRICING DOCKET**

DOCKETED BY

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Cox Arizona Telcom, LLC (Cox) replies to Qwest response to Cox's motion to commence Phase III of the Qwest UNE Pricing Docket. Qwest does not dispute that a Phase III proceeding is appropriate. However, Qwest objects to commencing the proceeding now, yet does not suggest when it believes the proceeding should be commenced. Qwest's request for an indeterminate delay in the Phase III should be rejected and Phase III should be commenced promptly.

Qwest's assertion that Cox should have filed its motion years ago -- that is, shortly after Decision No. 64922 -- is misplaced. Cox did not -- and does not -- believe that it was required to pay NRCs for any "on premises wire" subloops. Indeed, the initial price list submitted in compliance with Decision No. 64922 did not identify any NRC for either "on premises wire" subloops or intrabuilding cable. Moreover, the Sub-loop Amendment executed by Cox and Qwest does not expressly provide for any NRC charges. It was only in Docket Nos. T-01051B-06-0045 et al. -- where Qwest filed a damages complaint against Cox under the Sub-loop Amendment-- that it became apparent that Qwest sought to charge a \$57 NRC for an installation that did not require Qwest to do anything except perhaps note the loss of a customer in its computer records. Thus,

1 until Qwest filed its damages complaint, there was no reason for Cox to challenge the rate.

2 Qwest also asserts that Cox should have brought the motion closer to the time of the filing
3 of the complaint in Docket Nos. T-01051B-06-0045 et al. However, Cox waited to file its motion
4 only because Staff requested that Cox allow Staff to initiate Phase III. Cox assented to Staff's
5 request, but was compelled to file its motion based on recent statements by Qwest in Docket Nos.
6 T-01051B-06-0045 et al. that Cox had unduly delayed in filing a motion to commence Phase III.
7 Regardless of the timing of Cox's motion, there are still substantial potential benefits from
8 conducting Phase III now. There can be no serious dispute that the resolution of the NRC rates in
9 Phase III is important in determining the scope of Cox's liability in Docket Nos. T-01051B-06-
10 0045 et al. Nor can there be serious dispute that the timely resolution of the NRC rates could lead
11 to the resolution of the dispute in that Docket without the expenditure of substantial time and
12 resources required for a full evidentiary hearing. Qwest does not address this issue. Rather Qwest
13 asserts that Cox's *liability* – not the *scope* of the liability – can be decided without determination
14 of the NRC rates. But that position ignores the true potential benefit of conducting Phase III now.

15 The real question here is not why Cox did not file its motion sooner, but rather why Qwest
16 has *never* sought to obtain confirmation of the charges that it wishes to unilaterally impose -- and,
17 indeed, objects to any such proceeding now. No doubt, it is because Qwest stands to benefit from
18 continued uncertainty about the legality of its rates. Although Qwest relies on an ultimate true-up
19 of UNE rates as justification for delay, Qwest's potential ability to collect large, yet unfounded,
20 NRC (and other) rates will benefit only Qwest and will adversely impact Cox's and other CLEC's
21 resources available to expand competitive service in Arizona. Limiting the true-up period is sound
22 public policy.

23 WHEREFORE Cox requests that the Commission commence Phase III of this Qwest UNE
24 Pricing Docket to address and set rates for non-recurring charge rates for "on premises wire"
25 subloops.
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27

1 RESPECTFULLY SUBMITTED on April 2^d, 2007.

2 COX ARIZONA TELCOM. L.L.C.

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